Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion	)	GN Docket No. 19-285

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) supports the Commission's proposals to retain its 25 Mbps downstream/3 Mbps upstream speed benchmark for fixed advanced telecommunications capability and to again rely on Form 477 data as part of its progress-based analytical framework.[1] The Commission should adopt these proposals and conclude that advanced telecommunications capability is being deployed in a reasonable and timely fashion.

Although there is little doubt that progress has been made in delivering more and better broadband to consumers, additional work is needed to close deployment gaps. The Commission can take an important step to narrow this divide by implementing the Rural Digital Opportunity Fund in a manner that prioritizes the deployment of facilities in unserved areas that have not previously benefitted from the Connect America Fund.[2]

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1 *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fifteenth Broadband Deployment Report Notice of Inquiry, GN Docket No. 19-285, FCC No. 19-102 ¶ 6 (rel. Oct. 23, 2019) (*Notice*); *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report, 34 FCC Rcd 3857 (2019) (*2019 Report*).

2 Comments of NCTA – The Internet & Television Association, WC Docket No. 19-126 (filed Sept. 20, 2019).

I. THE COMMISSION SHOULD RETAIN ITS 25/3 MBPS FIXED SERVICES SPEED BENCHMARK

NCTA agrees with the Commission's proposal to retain the 25/3 Mbps fixed services speed benchmark for advanced telecommunications capability.[3] As the Commission previously has found,[4] fixed services with speeds of 25/3 Mbps enable users to "originate and receive high-quality voice, data, graphics, and video telecommunications" consistent with the statutory advanced telecommunications capability definition.[5] There is no reason at this time to increase the fixed services speed benchmark above 25/3 Mbps.

The Commission also should continue its practice of examining the deployment of other speed thresholds above and below the 25/3 Mbps benchmark.[6] As the Commission has recognized, looking at multiple speed metrics "is helpful to better understand consumer usage trends and marketplace developments."[7] In particular, measuring the deployment of Internet access services offering speeds below the 25/3 Mbps threshold provides an important perspective that should not be overlooked. These lower speed tiers can provide important capability to consumers, including the ability to perform critical functions on multiple devices, such as doing homework, submitting job applications, and using streaming video services. Moreover, such services may be more than sufficient for the 61 percent of households with only one or two

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3 *Notice* at ¶ 11.

4 *2019 Report* at ¶ 13.

5 *2019 Report* at ¶¶ 15, 38.

6 47 USC § 1302(c)(1).

7 *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660 ¶ 25 (2018).

residents,[8] particularly if those households also have broadband access at work and/or through a mobile device.

In addition to the metrics proposed in the *Notice*,[9] the Commission also should report on the significant progress that is being made in the deployment of services that offer gigabit downstream speeds. As noted by Commissioner Rosenworcel, cable operators have been rapidly rolling out gigabit services across the country.[10] Cable operators are expected to offer gigabit services reaching roughly 80 percent of American households by the end of this year. These services also are available from a variety of other providers and availability should continue to increase over time.

In reporting on gigabit services, the Commission should define such services using a threshold that reflects how they are being offered in the marketplace, not based on arbitrary assumptions about what type of upstream speeds should be paired with gigabit downstream speeds. Specifically, the Commission's mapping tool defines gigabit services using an arbitrary 100 Mbps upstream standard. Because cable operators typically offer lower upstream speeds with their gigabit services, the current approach will radically understate the progress cable operators have made in expanding the availability of gigabit services. The Commission should revisit this definition before releasing any new reports or maps to better capture the improvements taking place in the market.

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8 *See* United States Census Bureau, *Occupancy Characteristics*, American Fact Finder (for 2017, 27.7 percent of households had one occupant and 33.8 percent had two occupants), https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2501/0100000US.

9 *Notice* at ¶ 9.

10 *Notice*, Statement of Commissioner Jessica Rosenworcel, Dissenting (Rosenworcel Dissent) ("In fact, three years ago this country's largest broadband provider began rolling out gigabit service to just shy of 60 million homes and businesses – a process it completed.").

II. THE COMMISSION SHOULD CONTINUE TO RELY ON FORM 477 DATA

NCTA supports the Commission's proposal to continue relying on Form 477 data as the primary basis for its conclusions in this report. As the Commission explains, "these data are the most reliable and comprehensive currently available."[11]

We appreciate the concerns expressed by Commissioners Rosenworcel and Starks regarding deficiencies with the Form 477 data,[12] but those concerns do not provide a sound basis for excluding or minimizing the role of this dataset. The current system of census block reporting for the Form 477 first was proposed during the Genachowski era (based on the approach used by NTIA in preparing the original National Broadband Map),[13] adopted during the Clyburn era,[14] and has been used for every broadband progress report (and for the distribution of the Connect America Fund) throughout the Wheeler and Pai eras.

During this entire period, it generally was understood that: (1) there necessarily will be some level of over-reporting, because all locations within partially-served census blocks would be counted as served; and (2) notwithstanding this over-reporting, this dataset is by far the most granular and most accurate data that exists with respect to broadband deployment in the United States. There is no evidence to suggest that the degree to which coverage has been overstated

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[11] *Notice* at ¶ 16.

[12] Rosenworcel Dissent; *Notice*, Statement of Commissioner Geoffrey Starks, Dissenting. The Commission addressed these concerns on a prospective basis earlier this year when it adopted a new requirement that providers report fixed broadband deployments in a more granular manner through coverage maps submitted in Geographical Information Systems (GIS) or shapefile format, but that new requirement has not taken effect and therefore the Commission will not be able to rely on the resulting data in preparing the next broadband progress report. *Establishing the Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505 ¶ 11 (2019).

[13] *Modernizing the FCC Form 477 Data Program*, Notice of Proposed Rulemaking, 26 FCC Rcd 1508 ¶ 57 (2011).

[14] *Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887 ¶ 33 (2013); *Id*. at 9956, Statement of Commissioner Jessica Rosenworcel ("I am pleased to support today's Report and Order. Although limited in scope, it puts us on the path of securing continuity of the National Broadband Map by updating our Form 477 to collect network deployment data for fixed and mobile broadband.").

has changed in any meaningful way over time. Therefore, because the main use of the Form 477 data in this context is to enable year-over-year comparisons in broadband deployment, such comparisons were, and would continue to be, apples-to-apples comparisons that provide a reasonable estimate of the progress that has been made in expanding broadband throughout the country.[15]

III. THERE HAS BEEN SIGNIFICANT PROGRESS IN THE EXPANSION OF BROADBAND DEPLOYMENT

A. Cable Operators and Other Providers Are Increasing Speeds and Expanding to Unserved Areas

As NCTA has explained previously, one of the challenges for stakeholders in this annual exercise is the significant lag between the submission of deployment data to the Commission and the release of that data by the Commission.[16] The *2019 Report* relied on data for December 2017, and since then the Commission has only released data for June 2018.[17] While that data show some improvement over the six-month period covered, it does not fully capture the extent of progress that has been made by providers and reported in the two subsequent Form 477 submissions.

In the absence of more current, comprehensive data, stakeholders can only highlight the available evidence suggesting that progress continues to be made in the deployment of broadband to all Americans. From NCTA's perspective, an obvious sign of this progress is the

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[15] Indeed, if the Commission chose not to use the Form 477 data, it is not at all clear how it would go about performing the analysis required by Congress, because there is no other dataset that comes close to matching the granularity of the Form 477 data. While Commissioners Rosenworcel and Starks express concern about continued reliance on the Form 477 data, neither offers any suggestions as to how the Commission could proceed if it chose to follow their recommendations.

[16] *See* Comments of NCTA – The Internet & Television Association, GN Docket No. 18-238, at 1-2 (filed Sept. 17, 2018).

[17] *See FCC Releases Form 477 Data on Broadband Deployment as of June 30, 2018*, Public Notice, WC Docket No. 11-10, DA 19-897 (rel. Sept. 10, 2019).

continued rollout of gigabit services by cable operators. As noted above, NCTA estimates that roughly 80 percent of American households have access to cable services with gigabit downstream speeds. Cable operators not only have been increasing the speed of their offerings, they also have been working to expand the geographic scope of those offerings. For example, Midco was a winning bidder for CAF Phase II support and has begun expanding its network pursuant to its CAF Phase II commitments.[18] Similarly, a number of cable operators are expanding their networks in connection with their participation in state broadband programs.[19]

Other broadband technologies and providers have been expanding their networks in similar ways. Fiber-to-the-home technologies are available to more American households than ever before.[20] Similarly, fixed wireless and satellite services have increased the capability and reach of the networks and will continue to do so pursuant to deployment commitments made by winning bidders in the CAF Phase II auction.

Another clear sign of significant progress is the recent report from Education Superhighway, which highlights the fact that over 99 percent of schools are now wired with fiber.[21] As described in the report, over the last five years "new fiber-optic (or alternative scalable infrastructure) connections have been delivered to over 22,000 school buildings."[22]

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[18] *See, e.g., Mower supports MIDCO's efforts to provide high-speed internet to rural towns*, Daily Herald, Aug. 28, 2019, https://www.austindailyherald.com/2019/08/mower-supports-midcos-efforts-to-provide-high-speed-internet-to-rural-towns/.

[19] *See, e.g., Comcast expanding service to 7,000 in SML*, Smith Mountain Eagle, June 5, 2019, http://www.smithmountaineagle.com/news/article_9b261c18-87ab-11e9-9891-3fee6c438c7a.html; Cyrus Moulton, *High-speed broadband service slated for Princeton, 4 other towns under state grant*, Telegram & Gazette, Apr. 6, 2019, https://www.telegram.com/news/20190406/high-speed-broadband-service-slated-for-princeton-4-other-towns-under-state-grant.

[20] *See* Fiber Broadband Association, *All-Fiber Deployment Cost Study 2019* at 3, attached to Letter from Lisa R. Youngers, President and CEO, Fiber Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 19-126 and 10-90 (Sept. 12, 2019).

[21] Education Superhighway, State of the States, *The Classroom Connectivity Gap Is Closed* (2019), https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/2019%20State%20of%20the%20States.pdf.

[22] *Id*. at 6.

Based on all of this evidence of broadband expansion, the Commission again should find that broadband is being deployed in a reasonable and timely fashion.

B. The Commission Should Prioritize Rural Digital Opportunity Fund Support to Areas with No Broadband

The fact that the broadband deployment picture continues to improve does not mean that there is not more work to be done. In determining how to fill the remaining gaps, we agree with Commissioner Starks that it is important to understand why some areas are still unserved and what role the Commission's policies have played to date.[23] That said, achieving such understanding is a straightforward exercise that should not delay the distribution of funding to the places and people that need it.

From NCTA's perspective, there have been a variety of historical flaws in the Commission's universal service policies, most of which arise from policies that provided funding to incumbent local exchange carriers (LECs) simply due to their status as incumbent LECs and not in exchange for any particular performance. The Commission corrected one of the biggest problems in 2011 in the *CAF Order* when it conditioned support on explicit broadband deployment commitments for the first time.[24] Prior to that time, support was provided without any enforceable commitment to expand broadband deployment. The *CAF Order* also recognized that the use of competitive bidding was the most efficient way to distribute support.[25]

Unfortunately, the Commission undermined the potential benefits of these policy choices by awarding $10 billion to incumbent LECs without any competitive bidding process. And by

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[23] Geoffrey Starks, Commissioner, FCC, Keynote Address at the Broadband Communities Conference: Examining Internet Inequality: A Call for a Data-Driven 10 Year Look-Back of the FCC's High Cost Program (Oct. 31, 2019), https://www fcc.gov/document/starks-proposes-data-driven-10-year-look-back-high-cost-program.

[24] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 103 (2011) (*CAF Order*).

[25] *Id*. at ¶ 165.

requiring those carriers to deploy at a 10/1 Mbps level and then raising the threshold for "advanced telecommunications capability" to 25/3 Mbps shortly thereafter, the Commission all but ensured that a significant portion of rural America would be considered "unserved" for Section 706 purposes for many years to come, even though they plainly have access to broadband services.[26]

Going forward, the most important step the Commission can take is to prioritize those areas that do not even have access to 10/1 Mbps service when it implements the Rural Digital Opportunity Fund.[27] Simply put, bringing service to areas with no broadband should be a higher priority than bringing service to areas with slow broadband. To the extent no provider has sought support for deploying service to those areas in the past, the Commission should take steps, such as increasing the reserve price in the auction, that will attract the necessary investment.[28]

IV. CONCLUSION

For the reasons described herein, the Commission should continue to use the analytical framework employed in its *2019 Report*, which utilized the 25/3 Mbps fixed services speed benchmark and Form 477 data, and once again conclude that advanced telecommunications capability is being deployed in a reasonable and timely fashion. The Commission should also structure the Rural Digital Opportunity Fund to prioritize broadband deployment to unserved areas that have not previously benefitted from the Connect America Fund.

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[26] A similar result would occur if the Commission again raised the threshold (e.g., from 25/3 to 100/10) as some have proposed. Numerous areas that have received recent support from the Commission or from the Rural Utilities Service would again be considered "unserved" and providers likely would seek additional support for these areas before competing for support in more remote areas that have never had broadband at any speed.

[27] *See* Comments of NCTA – The Internet & Television Association, WC Docket No. 19-126, at 2-3 (filed Sept. 20, 2019).

[28] *Id*.

Respectfully submitted,

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